



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1993

Mr. John C. West, Jr.
Chief, Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR93-092

Dear Mr. West:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 16365.

The Texas Department of Public Safety (the department) received an open records request for criminal history record information (CHRI) of a deceased individual. You do not argue that the requested information comes under the protection of former section 3(a)(8), the "law-enforcement" exception (now found at section 552.108 of the Government Code) or that the release of the information would violate any perceived right of privacy.² Rather, you inquire whether the department is required to withhold the information pursuant to article 60.03 of the Code of Criminal Procedure.

Article 60.03(c) of the Code of Criminal Procedure provides:

Neither a criminal justice agency nor the [Criminal Justice Policy Council] may disclose to the public information in an individual's criminal history record *if the record is protected by state or federal law or regulation.* [Emphasis added.]

¹The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

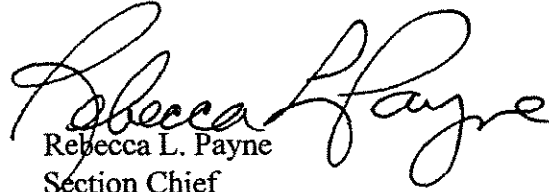
²Because the right of privacy lapses upon death, the deceased maintains no privacy interests in the information under Texas common law. See Attorney General Opinions JM-229 (1984); H-917 (1976).

Title 28, part 20 of the Code of Federal Regulations restricts the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990) (copy enclosed). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* You have informed a member of our staff that the criminal history that you have submitted to this office was generated by a state information system. The federal regulations are therefore inapplicable to the information at issue.

Furthermore, we are aware of no state law or regulation, other than section 552.108 of the Government Code, which "protects" the requested information. You have determined that because the subject of the criminal history information is deceased, there is no law enforcement interest sufficient to warrant withholding the information. Accordingly, because the CHRI is not made confidential by either state or federal law or regulation, the department must in this instance release the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,


Rebecca L. Payne
Section Chief
Open Government Section

RLP/RWP/rho

Ref.: ID# 16365
ID# 16692
ID# 16412

Enclosures: Open Records Decision No. 565
Submitted document

cc: Mr. Larry Gene Lucas
TDCJ# 514797
Ellis II Unit
Huntsville, Texas 77340
(w/o enclosures)